

**Kevin C. Brague, OSB No. 050428**  
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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**ELEAQIA MCCRAE,**

Plaintiffs,

v.

**CITY OF SALEM; MAYOR CHUCK  
BENNETT; CITY MANAGER STEVE  
POWERS; POLICE CHIEF JERRY  
MOORE; OFFICER RAMIREZ;  
ROBERT JOHNSTON; ANDREW  
MCFERRON; DAVID SMITH;  
OFFICERS JANE OR JOHN DOES 1-21,**  
all in their Official and Individual capacities;

Defendants.

Case No. 6:20-cv-01489-IM

**DECLARATION OF KEVIN BRAGUE IN  
SUPPORT PLAINTIFF'S MOTION TO  
EXCEED PAGE LIMIT**

I, Kevin Brague, hereby declare under penalty of perjury that the following is true and correct:

1. I represent Plaintiff in this matter, and I make this Declaration in support of Plaintiff's Motion to Exceed Page Limit.

2. Plaintiff is responding to Defendants's Rule 50 Motion on whether or not Defendant Robert Johnston is entitled to qualified immunity. Ex. 1, Trial Transcript.

3. Plaintiff seeks leave to file a Response to Defendants' motion that exceeds the court's order of ten pages in length due to the extensive trial record, the scope of Defendant's Rule 50 Motion, the legal issues concerning qualified immunity, and use of less lethal munitions in excessive force cases.

4. The presently drafted Response is 13 pages. I have pared down citations to relevant cases, avoided undue repetition or duplication in the presentation of the factual background and the legal arguments but have been unable to bring the Response down to ten pages.


5. I do not believe I can adequately set forth Plaintiff's arguments given the scope of Defendants' Rule 50 Motion, and the issue of qualified immunity and its treatment within the Ninth Circuit for the Court's consideration on this record within the ordered page limit.

6. Plaintiff requests a page limit for her Response not to exceed fifteen pages.

I hereby declare under penalty of perjury that the foregoing is true and correct.

DATED this 20<sup>th</sup> day of October, 2022.

THE BRAGUE LAW FIRM

By   
Kevin C. Brague, OSB No. 050428  
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Attorney for Plaintiff

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF KEVIN BRAGUE IN SUPPORT OF PLAINTIFF'S MOTION TO EXCEED PAGE LIMIT on the party listed below by the following indicated method or methods:

Aaron P. Hisel, OSB No. 161265  
*aaron@montoyahisellaw.com*  
Montoya, Hisel and Associates  
901 Capitol Street NE  
Salem, OR 97301  
T: 503.480.7250  
F: 503.779.2716  
Attorneys for Defendants

☒ [X] by electronic means through the U.S. District Court, District of Oregon's CM/ECF document filing system.

☐ [ ] by mailing a full, true and correct copy thereof in a sealed, first-class postage paid envelope, addressed to the address as shown above, with the U.S. Postal Service at Portland, Oregon, on the date set forth below.

☐ [ ] by causing a full, true, and correct copy thereof to be hand-delivered to the attorney at the attorney's last known office address listed above on the date set forth below.

☐ [ ] by faxing a full, true, and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below.

DATED this 20<sup>th</sup> day of October, 2022.

/s/ Kevin Brague  
Kevin C. Brague, OSB No. 050428

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

ELEAQIA MCCRAE, )  
)  
Plaintiff, ) Case No. 6:20-cv-01489-IM  
)  
v. )  
) September 30, 2022  
)  
CITY OF SALEM; OFFICER ROBERT )  
)  
JOHNSTON, all in their )  
)  
official and individual )  
)  
capacities, )  
)  
Defendants. ) Portland, Oregon  
)  
\_\_\_\_\_ )

TRIAL DAY 5  
EXCERPT OF PROCEEDINGS  
BEFORE THE HONORABLE KARIN J. IMMERGUT  
UNITED STATES DISTRICT COURT JUDGE

## 1 APPEARANCES

2 FOR THE PLAINTIFF:

3 KEVIN C. BRAGUE  
4 The Brague Law Firm  
5 4504 S. Corbett Avenue  
6 Suite 250  
7 Portland, OR 97239

8 FOR THE DEFENDANT(S):

9 JENNIFER M. GADDIS  
10 City of Salem Legal Department  
11 555 Liberty St. SE  
12 Room 225  
13 Salem, OR 97301

14 FOR THE DEFENDANT(S):

15 AARON P. HISEL  
16 Law Offices of Montoya, Hisel and  
17 Associates  
18 901 Capitol Street NE  
19 Salem, OR 9730120 COURT REPORTER: Jill L. Jessup, CSR, RMR, RDR, CRR, CRC  
21 United States District Courthouse  
22 1000 SW Third Avenue, Room 301  
23 Portland, OR 97204  
24 (503) 326-8191

25 \* \* \*

1 the issue is, is Officer Johnston entitled to qualified  
2 immunity or not?

3 And, particularly, now that we have that he -- the jury  
4 found not target -- that your client was not specifically  
5 targeted by Officer Johnston. So that's what I want to hear  
6 about, but -- and, obviously, Ninth Circuit, D.C. Circuit, U.S.  
7 Supreme Court are the more authoritative -- are authoritative  
8 for me, and if there are district court opinions in this  
9 district, then, of course, I look to those for guidance, but I  
10 don't need to hear district court cases --

11 MR. BRAGUE: Certainly.

12 THE COURT: -- from other districts that have no  
13 bearing on what I need to do.

14 MR. BRAGUE: Certainly.

15 THE COURT: But I'm going to give -- how much time,  
16 Mr. Hisel? Because I think it's still better for you to  
17 file -- frame the initial pleading and the motion, and you have  
18 heard -- who knows exactly what Mr. Bague is going to do?  
19 But, obviously, *Nelson* was one that is raised. I'm interested  
20 in how distinguishable that is.

21 But how about -- can you do it in -- I'm going to say ten  
22 pages and then a response -- again, if you need leave to file  
23 some additional -- I just don't want to have tons of briefing  
24 on this because I think it's a limited issue.

25 MR. HISEL: Honestly, Your Honor, my concern is not

## C E R T I F I C A T E

Eleaia McCrae v. City of Salem, et al.

6:20-cv-01489-IM

Trial Day 5

EXCERPT OF PROCEEDINGS

September 30, 2022

I certify, by signing below, that the foregoing is a true and correct transcript of the excerpted record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter  
Oregon CSR No. 98-0346

Signature Date: 10/19/2022  
CSR Expiration Date: 9/30/2023